



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31124996

Date: MAY 17, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that while the Petitioner established the initial evidence requirements by meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3), the record did not establish that she possesses sustained national or international acclaim and is one of the very few at the top of her field. On appeal, the Petitioner asserts that the Director did not consider the totality of the record in making their decision.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner seeks classification as an individual of extraordinary ability as a “performing artist.” She has been working as an actor and producer, primarily in film and theater productions but also in television, for more than fifteen years. In the recent years she has been working in the motion picture industry as a nonimmigrant, primarily in the [REDACTED] California area, while occasionally participating in performing arts projects abroad. In response to the Director’s request for evidence she clarified her intention to continue to work in this field, noting for instance that she will “[p]erform for film, stage, and television productions. Make creative decisions about film, stage, and television productions. Write original or adapted material for performances.”

As a preliminary matter, we acknowledge that the Petitioner has been the Beneficiary of an approved O-1B petition. Although USCIS has approved at least one O-1B nonimmigrant visa petition filed on behalf of the Petitioner, this prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations, and case law. The nonimmigrant and immigrant categories have different criteria, definitions and standards for persons working in the arts. “Extraordinary ability in the field of arts” in the nonimmigrant O-1B category means distinction. 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, “extraordinary ability” reflects that the individual is among the small percentage at the very top of the field. 8 C.F.R. § 204.5(h)(2).

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met four of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to published material about her in qualifying media, her participation as a judge of the work of others, the display of her work in artistic exhibitions or

showcases, and her performance in a leading or critical role for organizations or establishments that have a distinguished reputation. On appeal, the Petitioner asserts that she also satisfies an additional evidentiary criterion, relating to her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.¹ After reviewing all of the evidence in the record, we agree with the Director that she has met the requisite three criteria, but also that the record does not establish that she qualifies as an individual of extraordinary ability.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The record includes copies of several articles published in Italian media which discuss or mention the Petitioner and her work in varying degrees. For purposes of this criterion, while published material need not be primarily or only about a petitioner to qualify, it cannot be solely about their employer or another organization with which they are associated. 6 *USCIS Policy Manual* at F.2, <https://www.uscis.gov/policymanual>. Here, the Director acknowledged that one publication, *Il Resto Del Carlino*, qualifies as major media, and that the record contains articles published by this newspaper which discussed the Petitioner and her work in the field. We therefore agree that the Petitioner meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

To support her claim to meeting this criterion, the Petitioner submitted letters and articles confirming that she participated as a judge of the work of others in the field at Movievalley Bazzacinema Short Film Festivals over a period of several years and at the Burbank International Film Festival in 2022. She also provided information about these festivals. Accordingly, we agree with the Director that the Petitioner meets this criterion based upon the evidence of her work as a judge at these festivals.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

The Petitioner submitted evidence of her work as an actor and as a film producer in films that were exhibited at film festivals. We note that the Director analyzed the evidence under this criterion by differentiating between the film work that the Petitioner performed as an actor and as a producer. The Director concluded that the display of her work as an actor at film festivals qualified her for the criterion, but the display of her work as a film producer at these events did not. The Director did not explain their reasons for making this distinction. Based on our de novo review, we conclude the Petitioner presented evidence sufficient to show that her work both as an actor and as a film producer has been exhibited at film festivals over the years, and thus meets the plain language requirements for

¹ The Petitioner does not assert nor does the record establish that she satisfies any of the other criteria at 8 C.F.R. § 204.5(h)(3).

this criterion. We agree with the Director's ultimate determination that the Petitioner satisfied this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

In determining whether an individual has met the plain language of this criterion, we first determine whether they have performed in a leading or critical role for an organization, establishment, or a division or department of an organization or establishment. In general, a leading role may be evidenced from the role itself, and a critical role is one in which an individual is responsible for the success or standing of the organization or establishment.

Second, we determine whether the organization or establishment, or the department or division for which the person holds or held a leading or critical role, has a distinguished reputation. Merriam-Webster's online dictionary defines "distinguished" as marked by eminence, distinction, or excellence or befitting an eminent person. See Merriam-Webster Dictionary's definition of "distinguished." To establish that the entity enjoys a distinguished reputation, a petitioner may offer (for example) prestigious awards, media coverage, or published rankings to demonstrate that an organization or establishment has a distinguished reputation.

The Petitioner stated that she qualifies for this criterion based on her work with a production company, [REDACTED] (F-), which she started and still operates with her colleague, [REDACTED] (Mr. S-). The Petitioner initially presented pages from F-'s website which indicate that the company is "[a] film production company born in 2016 with the goal of developing new and audacious projects . . . We are currently producing our own projects, but we would be thrilled to discuss your scripts or proposals: we look forward to getting to know your ideas." The Petition initially stated that F- "is a distinguished organization that has produced multiple award-winning films. The multitude of awards received by F- evidences the production company's excellence in the industry as a distinguished organization." She asserted, among other things, that she performed in leading and critical roles as an actor and a producer in films created under F-'s auspices.

The Director issued a request for evidence (RFE) asking for additional evidence that would establish that the Petitioner has performed in a leading or critical role for F-, and that F- enjoys a distinguished reputation. In response, she provided a letter from Mr. S- in which he explains how her performance as co-founder, actor, producer, and writer for F- has been critical to the organization's success. The Petitioner provided another letter from [REDACTED] director of F-'s film [REDACTED] stating that the Petitioner's production activities were critical to the film's success.

Based on this evidence, the Director determined that the Petitioner had performed in leading and critical roles for F- and satisfied this criterion. While we agree with the Director that the Petitioner has shown she performed in leading and critical roles for F-, we conclude that the Director erred by not addressing whether F- has a distinguished reputation in denying the petition. Therefore, we withdraw the Director's determination that the Petitioner has met the plain language of this criterion. While we acknowledge that F- has been involved in the production of a few films that have garnered awards at film festivals, the Petitioner did not substantiate her assertions regarding F-'s reputation with

sufficient supporting documentary evidence, as requested by the Director. Therefore, she does not satisfy this criterion through her work with F-.

The Director also determined that although the Petitioner presented information about her involvement with two other film companies (K- and E-), she did not submit evidence sufficient to show that the two films are organizations or establishments that have a distinguished reputation. The Director also observed that the Petitioner had not provided evidence, such as testimony from K- or E-, to establish she had performed in leading or critical roles for those organizations, even though the Director had requested such evidence. Therefore, we agree with the Director that the evidence in the record falls short in establishing that her work on films associated with K- and E- meets the plain language of this criterion. This criterion has not been met.

As noted above, on appeal the Petitioner asserts that she also meets an additional criterion. However, because we have determined that she has met the requisite three criteria to meet the initial evidence requirements for this classification, we will not consider her claims to this criterion.

B. Final Merits Determination

As noted above, once an individual has established that they meet the initial evidence requirement, we conduct a final merits determination. In a final merits determination, we examine and weigh the totality of the evidence to determine whether an individual has sustained national or international acclaim and is one of the small percentage at the very top of their field of endeavor, and that their achievements have been recognized in the field through extensive documentation. As extraordinary ability is an elite level of accomplishment whose recognition necessarily entails a judgement call, it cannot be established through meeting at least three of the evidentiary criteria alone. The final merits determination is the ultimate statutory inquiry of whether the applicant has extraordinary ability as demonstrated by sustained national or international acclaim. *Amin v. Mayorkas*, 24 F.4th 383, at 395 (2022).

On appeal, the Petitioner relies on the evidence presented to the Director, which they considered in denying the petition. She asserts that they incorrectly conducted the final merits determination by failing to properly review and weigh the entire record of evidence submitted in support of the petition as part of that analysis. Based on our de novo review, the Director's denial encompassed sufficient explanations about the deficiencies in the Petitioner's evidence. Contrary to the Petitioner's assertions on appeal, we conclude the record does not reflect that the Director gave the Petitioner's evidence insufficient weight in collectively analyzing it in totality within their final merits determination.

In the denial, the Director acknowledged that the Petitioner's evidence included letters of recommendation, media articles, and printed material about the theatrical performances, films, production companies, and festivals which she has worked or been associated with. They concluded that the totality of the evidence fell short of demonstrating that she meets the requirements for classification as an alien with extraordinary ability in the performing arts. We agree.

We reviewed and collectively considered the entire record, including the media articles provided about the Petitioner and her work.² We determine that the Petitioner has not met her burden through this evidence to show that she has received critical acclaim or commercial success at the national or international level as a performing artist. For example, in a 2010 newspaper article, entitled [REDACTED]

[REDACTED] the author states that at the age of 22 the Petitioner “participated in [a] prestigious film festival as a protagonist, presenting [her] movie that also moved her very deeply.” The article goes on to discuss her experiences working with a film director who had recently passed away. The article does not discuss the significance of the Petitioner’s acting performance but rather seems to focus on the juxtaposition of the Petitioner’s status as a young, inexperienced actor with the end of the career of a renowned director who had passed away.

Another article published in 2011, focused entirely on another individual, [REDACTED] and discussed Ms. [REDACTED] directorial debut in a film in which the Petitioner had an acting role. We don’t see how this article constitutes evidence about the Petitioner. Another article, published in 2012, is sub-captioned - [REDACTED]

Notably, this article focuses on the Petitioner’s life as a “young actress” amongst stellar actors and directors in California, not the significance of her acting performances. A 2017 article about one of the festivals where the Petitioner performed as a judge, notes that she and Mr. S- were provided “technical services to the festival while also being part of the jury,” but does not touch on her accomplishments as a performing artist.

Other articles discuss her work as a judge at film festivals but do not describe her work in terms that suggest she has garnered sustained national or international acclaim through her performing arts activities. For example, in one article which principally discusses the events at a film festival, it is noted that the “young artist, [the Petitioner], handed out the plaques for the contest.”

The record also contains an article that discusses a pedophilia documentary that was filmed by the Petitioner and Mr. S-. The article provides general statistics about pedophilia, emphasizes that the sexual abuse of minors is a matter of huge concern, and notes that “[c]rowd funding has also been launched to support the high costs of the movie.” But the article does not discuss the significance of the Petitioner’s work on this project to the motion picture industry, nor does it suggest in any other way that the Petitioner garnered sustained acclaim through this work.

There are other articles in the record that similarly discuss the Petitioner; some also mention in passing that the Petitioner has been involved with films that have garnered awards at various film festivals. However, this media falls short to establish to establish the Petitioner’s contention on appeal that she “has been featured extensively in nationally and internationally circulated media that have discussed the merits of her work, accomplishments, and achievements in her field.” Therefore, we agree with the Director’s determination that the level and frequency of publication about the Petitioner in the record are not indicative of the Petitioner attaining a position at the top of the field and sustaining national or international acclaim for achievements as a performing artist.

² While we may not discuss every document submitted in support of the petition, we have reviewed and considered each one.

We also agree with the Director that the evidence does not establish that the Petitioner was asked to judge the Movievalley Bazzacinema Short Film Festivals due to her national or international acclaim in the performing arts. As discussed by the Director, a submitted article simply states that she was “part of the jury” in 2017. According to the letter from [] the Petitioner was invited to judge the Burbank International Film Festival because the board “value[s] her experience as an awarded filmmaker and actress.” The writer goes on to state that the board determined that the Petitioner’s participation as a judge could help the festival become “Oscar-qualifying.” But the letter does not sufficiently convey that she was selected to serve as a judge at the Burbank International Film Festival due to holding a high position and being esteemed in the field at the national or international level. Moreover, the Petitioner has not shown the Burbank International Film Festival burnished its reputation or advanced its prestige through the Petitioner’s judging work as asserted in Ms. [] letter.

We acknowledge that some of the films the Petitioner produced and has acted in have attracted attention and received awards in recent years, but the evidence does not collectively establish that she has achieved or sustained a high level of national or international renown for her work as a performing artist. On appeal, the Petitioner points to awards she received for the films: [] [] She notes, among other things, that [] won the Best Comedy Award at the [] Film Festival, [] won Best Film at the [] Film Festival, while [] won Best LGBTQ Film at the [] Film Festival.

In response to the RFE, the Petitioner provided letters from individuals involved with these festivals who each provide a few sentences acknowledging her involvement in these film projects and indicate that she should be credited with these awards. However, these letters are all dated after the date of the RFE in which the Director requested such evidence and were written at least a year or more after the granting of the awards at the festivals.

For instance, the letter submitted to confirm her receipt of the [] award at the [] Film Festival was written in 2023, two years after the award itself was given in 2021. Here, the record lacks contemporaneous probative evidence to illustrate that the awards the Petitioner received are recognized as being prestigious in the performing arts field at the national or international level, or that they otherwise brought acclaim to the Petitioner as an actor or as a producer. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Based on this lack of probative evidence, we agree with the Director that the Petitioner had not established that she enjoys sustained acclaim as a performing artist at the national or international level.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act.

Moreover, the record does not otherwise demonstrate that the Petitioner has garnered sustained national or international acclaim in the field, and that she is one of the small percentage who have risen to the very top of the field of contemporary dance. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). We therefore agree with the Director's conclusion that the Petitioner has not established her eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.